

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telemetron, Inc.)	
)	File Numbers D125581 and D133075
Applications for Private Land Mobile Radio)	
Services Licenses in the 218-219 MHz Band and)	
Requests for Waivers of Sections 90.127(b) and)	
90.155(a) of the Commission's Rules)	
)	

ORDER

Adopted: February 25, 2000

Released: March 15, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us applications¹ and waiver requests² filed by Telemetron, Inc. (Telemetron) seeking authority to provide vehicle tracking services by means of private land mobile radio (PLMR) systems operating in the 219-219 MHz band on a secondary basis pursuant to Part 90 of the Commission's Rules. For the reasons stated below, we deny Telemetron's waiver requests and dismiss its pending applications.

II. BACKGROUND

2. Telemetron proposes to construct and operate systems on a nationwide basis to serve businesses that need to track fleets of vehicles. The systems Telemetron proposes would use vehicle-mounted units that would transmit Global Positioning System location information to one of a number of base stations, using the 218-219 MHz band. The base stations, in turn, would relay information via a

¹ Telemetron, Inc. Private Land Mobile Radio Services Application for Telemetry License In the 218-219 MHz Band, filed April 27, 1999, and Telemetron, Inc. Private Land Mobile Radio Services Application for Telemetry License In the 218-219 MHz Band, filed June 11, 1999, and supplemented December 8, 1999 (collectively, Telemetron Applications) at Exhibit I, p. 1. Although Telemetron's second application (as amended), for a nationwide license, would appear to encompass its pending application in the Los Angeles area, it has not requested withdrawal of its pending Los Angeles application. Accordingly, we consider both applications in this *Order*.

² Petition of Telemetron, Inc. for Waiver of Sections 90.127(b) and 90.155(a) of the Commission's Rules to Telemetron to Provide a Vehicle Tracking Service in the Los Angeles Metropolitan Statistical Area, filed April 27, 1999, and Petition of Telemetron Inc. for Waiver of Sections 90.127(b) and 90.155(a) of the Commission's Rules, filed June 11, 1999 (collectively, Telemetron Waiver Petitions).

wireline connection to a system hub, which would relay location data – via a wireline connection – to subscribers’ personal computers.³

3. Because Telemetron’s system design requires one-way radio communications between vehicle-mounted units and base stations on the 218-219 MHz band, it has applied for authority to operate a land mobile system under Part 90 of the Commission’s Rules.⁴ The Commission’s Rules permit land mobile radio use of the 216-220 MHz band – which includes the 218-219 MHz frequencies that are the subject of Telemetron’s applications – and the 1427-1435 MHz band only for telemetering purposes.⁵ In addition, the portion of the band between 218 and 219 MHz is allocated on a primary basis to the 218-219 MHz Service.⁶

4. Recently, the Commission substantially restructured the service rules for the 218-219 MHz Service to provide additional flexibility for use of the service in an effort to, *inter alia*, promote and facilitate competition and provision of services within the 218-219 MHz band.⁷ Because the new rules took effect in January, the “full and effective development and deployment of the 218-219 MHz Service” that the rule changes are designed to foster is in an incubative stage,⁸ and, as Telemetron observes, there is only limited use of the 218-219 MHz Service at the present time.⁹

III. DISCUSSION

5. Telemetron’s proposed operations would require a waiver of Section 90.259, which limits Part

³ Telemetron Applications at Exhibit I, p. 1.

⁴ Specifically, Telemetron requests authority pursuant to Sections 90.35, 90.117, 90.119, 90.137, 90.238, and 90.259 of the Commission’s Rules, 47 C.F.R. §§ 90.35, 90.117, 90.119, 90.137, 90.238, 90.259.

⁵ 47 C.F.R. §§ 90.35(d)(55), 90.259.

⁶ 47 C.F.R. § 2.106 footnote US317. The 218-219 MHz Service was formerly known as the Interactive Video and Data Service. *See* Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, 13 FCC Rcd 19064, 19075 ¶ 16 (1998) (*218-219 MHz Service NPRM*).

⁷ Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, WT Docket No 98-169, FCC 99-239, at ¶¶ 1, 14 (rel. Sept. 10, 1999) (*218-219 MHz Service Order*).

⁸ *Id.* at ¶ 14.

⁹ Telemetron Applications, Exhibit I at 2.

90 use of the 216-220 MHz band to telemetering operations.¹⁰ To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either (a) that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and grant of the requested waiver would be in the public interest; or (b) that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹¹ We find that Telemetron has met neither standard.

6. *Underlying Purpose.* We find that Telemetron's proposal is inconsistent with the underlying purpose of both Section 90.259 and the 218-219 MHz Service rules. As noted above, Section 90.259 limits Part 90 use of the 216-220 MHz band to telemetering operations. When the Commission proposed Section 90.259, it specifically excluded vehicle locator systems from the proposed allocation, and instead described its intention that the band "be available for local area requirements that can be accommodated compatibly on a case-by-case basis with other users and cannot be expected to be available nationwide, without constraint, for wide-area coverage systems."¹² In the subsequent *Report and Order*, the Commission reaffirmed this approach by rejecting as inappropriate comments that proposed nationwide use of the 216-220 MHz band by the trucking industry.¹³ Accordingly, we find that application of the limitation in Section 90.259 to Telemetron's proposal furthers the Commission's intent.

7. In addition, we reject Telemetron's contention that its applications are similar to an

¹⁰ 47 C.F.R. § 90.259. The Commission's Rules define telemetering as "the transmission of non-voice signals for the purpose of automatically indicating or recording measurements at a distance from the measuring instrument." 47 C.F.R. § 90.7. Telemetron appears to assume that its proposed operations come within the definition of telemetering. We disagree. Neither the rules for the 218-219 MHz Service nor the rules for the Location and Monitoring Service (LMS) define the types of operation that Telemetron proposes as telemetering. Indeed, telemetering is not authorized on the 902-928 MHz LMS frequency band. 47 C.F.R. § 90.238. Therefore, we conclude that Telemetron's proposed operations do not come within the definition of telemetering, and therefore require a waiver of Section 90.259. In addition, Telemetron requests waivers of Sections 90.127(b) and 90.155(a) of the Commission's Rules, 47 C.F.R. §§ 90.127(b), 90.155(a), regarding the construction period and permissible number of mobile units for Part 90 operations. *See* Telemetron Waiver Petitions at 1. Because we conclude that a waiver of Section 90.259 is not warranted, however, we need not and do not address Sections 90.127(b) and 90.155(a).

¹¹ 47 C.F.R. § 1.925(b)(3).

¹² Amendment of Parts 2, 87 and 91 of the Rules to Delete Provisions for Aeronautical Telemetering and to Make Provisions for Land Mobile Telemetering in the Industrial Radio Services in the Frequency Band 216-220 MHz, *Notice of Proposed Rulemaking*, Docket No. 18924, 24 FCC 2d 554, 556 ¶ 8 (1970).

¹³ Amendment of Parts 2, 87 and 91 of the Rules to Delete Provisions for Aeronautical Telemetering and to Make Provisions for Land Mobile Telemetering in the Industrial Radio Services in the Frequency Band 216-220 MHz, *Report and Order*, Docket No. 18924, 29 FCC 2d 360, 361 ¶ 2 (1971). We recognize that the principal concerns in the proceeding related to Government use of the 216-220 MHz band, which Telemetron contends is not an issue since the 218-219 MHz band was allocated on a primary basis to the 218-219 MHz Service. Telemetron Applications, Exhibit I at 6. We note, however, that Telemetron has not shown through engineering studies how its proposed systems would protect current and future licensees in the band. Indeed, given Telemetron's request for an extended construction period of unspecified length partly on the grounds that it needs additional time to design a system to eliminate any potential interference to 218-219 MHz Service operations, it appears that Telemetron does not yet have a design or plan for preventing harmful interference to primary users. *See* Telemetron Waiver Petitions at 3. Thus, we believe that the concerns underlying the exclusion of vehicle tracking services from the 216-220 MHz band remain relevant to Telemetron's request.

application filed by Itron, Inc., which requested and was granted authority to operate utility meter reading technology in the 1427-1429 MHz band nationwide on a secondary basis.¹⁴ We find the instant applications readily distinguishable in that they propose operations in the 218-219 MHz band. The rules for this band recently were restructured to create a regulatory structure that enables licensees to meet the public's current and future needs through more technically and economically efficient use of the spectrum.¹⁵ Specifically, the Commission removed those rules limiting use of the band to a short-distance one- or two-way point-to-point or point-to-multipoint private radio service and instead allowed licensees to design their service offerings in response to market demand.¹⁶ In light of these rule changes, we are hesitant to allow any licensing in the band that may inhibit the rapid development of the 218-219 MHz Service. Although we recognize that Telemetron makes its requests for operation on a secondary basis – and thus would not be permitted to cause interference to 218-219 MHz Service licenses – we are nonetheless concerned that Telemetron's proposed operations could discourage development of 218-219 MHz Service systems just as licensees are poised to make viable use of the band. The Commission does not coordinate secondary operations with respect to primary or permitted services.¹⁷ We are concerned that Telemetron's request is devoid of a mechanism or plan by which Telemetron will avoid causing interference to the operations accorded primary status in the 218-219 MHz band.

8. Further, we are concerned that permitting implementation of Telemetron's proposal could have an adverse effect on the rapid development and deployment of services in the 218-219 MHz band. In this connection, we note that in a similar situation where the Commission broadly structured the permissible communications within a radio band in order to allow licensees to develop applications that best serve market demand, it explicitly limited the concurrent authorization of services on a secondary basis because of such concerns. When the Commission broadened the rules for the Local Multipoint Distribution Service (LMDS) to encompass a wide variety of services,¹⁸ incumbent licensees in the 31 GHz band were accommodated in a spectrum sharing and segmentation plan,¹⁹ but no new licensing of 31 GHz services – either on a primary or secondary basis – was allowed.²⁰ The Commission concluded that expansion of these services “would likely have a chilling effect on the efforts of LMDS providers to establish and expand their services in response to consumer demand, seriously jeopardizing our objectives

¹⁴ Telemetron Applications, Exhibit I at 1.

¹⁵ *218-219 MHz Service Order* at ¶ 1.

¹⁶ *Id.* at ¶ 16. Although the Commission has noted the variety of services that have been proposed for the 218-219 MHz Service, including commercial data applications, remote meter reading, and inventory monitoring, each licensee will ultimately determine the particular service it will offer. See *218-219 MHz Service NPRM*, 13 FCC Rcd at 19075 ¶ 16.

¹⁷ Teledesic Corporation, *Order and Authorization*, 12 FCC Rcd 3154, 3162 n.23 (IB 1997).

¹⁸ Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocation the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, CC Docket No. 92-297, 12 FCC Rcd 12545, 12636, ¶ 205 (1997).

¹⁹ See generally *id.* at 12581 ¶ 79.

²⁰ *Id.* at 12590 ¶ 104.

in designating the band for LMDS.²¹ We recognize that under the revisions to the 218-219 MHz Service, concurrent licensing is still available on a secondary basis, but we cannot agree with Telemetron that the 218-219 MHz proceeding did not affect such licensing.²² Because stations licensed on a secondary basis, by definition, may not cause harmful interference to stations of primary services,²³ we must evaluate any application for licensing under Part 90 of the Commission's Rules within the context of permissible primary operations in the 218-219 MHz Service.

9. *Public Interest.* We believe that Telemetron's proposal is distinguishable from the Itron application in that Itron proposed to use the frequencies for telemetering purposes, while Telemetron proposes vehicle tracking services. In this regard, we find that Telemetron's proposal is similar to the more recently denied application and waiver request filed by Technology for Communications International (TCI) to provide a nationwide tracking and messaging service for the commercial trucking industry on high seas public coast frequencies.²⁴ Telemetron argues that grant of a waiver would be in the public interest, because the Commission has recognized the benefits of vehicle tracking applications such as Telemetron proposes.²⁵ TCI made a similar argument, which we rejected.²⁶ We noted that this technology can be deployed in a number of services that the Commission licenses.²⁷ For example, the Location and Monitoring Service (LMS) supports such operations,²⁸ and at least one 218-219 MHz Service licensee is developing a vehicle tracking service.²⁹ In addition, as noted earlier, Telemetron's representation that the system will operate on a secondary basis to 218-219 MHz Service operations is not sufficient to eliminate any concern about harmful interference, given that Telemetron does not appear to have a plan for avoiding interference. Consequently, we find that the record in this proceeding does not indicate sufficiently that grant of the requested waiver would be in the public interest.

10. *Unique Circumstances.* Telemetron has not made any showing of unique circumstances justifying grant of its application. Indeed, Telemetron's request could be made with respect to any other

²¹ *Id.* at 12588 ¶ 98.

²² Telemetron Applications, Exhibit I at 3.

²³ 47 C.F.R. § 2.104(d)(4)(i).

²⁴ See Technology for Communications International, *Order*, DA 99-2015 (WTB PSPWD rel. Oct. 1, 1999) (*TCI Order*).

²⁵ Telemetron Applications, Exhibit I at 4 (citing Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Report and Order*, PR Docket No. 93-61, 10 FCC Rcd 4695 (1995)).

²⁶ *TCI Order* at ¶ 9.

²⁷ *Id.*

²⁸ See Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, PR Docket No. 93-61, 13 FCC Rcd 15182, 15185 ¶ 4 (1998) (describing vehicle tracking applications under LMS). The Commission completed the competitive bidding and authorization process for licenses in the LMS last year. See Wireless Telecommunications Bureau Announces It Is Prepared to Grant Location and Monitoring Service Licenses after Final Payment Is Made, *Public Notice*, DA 99-1124 (WTB rel. June 8, 1999).

²⁹ See Community Teleplay, Inc. Comments in WT Docket No 98-169 (filed Oct. 30, 1998).

geographic area – or even as part of an application to provide nationwide service. We therefore conclude that Telemetron has not established the existence of unique or unusual circumstances justifying a waiver.

11. *Lack of Reasonable Alternatives.* As noted above, Commission rules for some non-PLMR services permit vehicle tracking operations, and such offerings are being provided and developed.³⁰ Thus, we believe that Telemetron has reasonable alternatives under the Commission's Rules that do not require a waiver. In addition, Telemetron has not described how, or even whether, it has attempted to obtain licenses in any of these services, either by initial licensing or through partitioning and disaggregation. Consequently, we cannot conclude that there are no reasonable alternatives to Telemetron's proposal.

IV. CONCLUSION

12. For the foregoing reasons, we conclude that grant of Telemetron's proposed vehicle location system on a nationwide basis on the 218-219 MHz band under a Part 90 authorization would unduly jeopardize development of the 218-219 MHz Service, and therefore would conflict with the underlying purpose of the Commission's Rules and would not be in the public interest. Because we conclude the Telemetron has not provided sufficient justification for the waivers to operate such a system, we deny its waiver requests and dismiss the associated applications.

V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the waiver requests filed by Telemetron, Inc., on April 27, 1999 and June 11, 1999, ARE DENIED.

14. IT IS FURTHER ORDERED that the applications of Telemetron, Inc. to operate a nationwide private land mobile system on a secondary basis in the 218-219 MHz band, FCC File Nos. D125581 and D133075, ARE DISMISSED.

15. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

³⁰ See *supra* notes 27-29 and accompanying text.